



## **FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY**

nbkc bank complies with the Family and Medical Leave Act (FMLA) and allows eligible employees to take job-protected, unpaid leave for certain qualifying reasons. There are two types of leave available, including the basic 12-week entitlement and military family leave entitlements described in this policy. The purpose of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be given all rights required by law.

### **Eligibility**

To be eligible for leave under this policy, employees must meet all the following requirements:

- Worked at least twelve (12) months for nbkc bank in the last seven years (unless the break in service is due to or necessitated by the employee's USERRA covered service obligation).
- Worked at least 1,250 hours for nbkc bank over the twelve (12) months preceding the date the leave would commence.
- Currently work at a location where there are at least fifty (50) employees within seventy-five (75) miles; and
- A qualifying reason for leave

The 12 months of employment do not have to be consecutive. All periods of absence from work due to or necessitated by service in the uniformed services are counted as hours worked in determining eligibility.

### **Basic Family Leave**

Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of leave during a 12-month period, defined later, for one, or more, of the following reasons:

- Birth of the employee's child, and to care for the newborn child during the first 12 months following birth.
- Placement of a child with the employee for adoption or foster care, and to care for the newly placed child.
- Care for a spouse, child or parent who has a serious health condition.
- A serious health condition that makes the employee unable to perform the essential functions of his/her job.

### **Military Family Leave**

There are two types of Military Family Leave available.

(1) *Qualifying Exigency Leave.* For any qualifying exigency arising out of the fact that a spouse, child, or parent is a military member on covered active duty or an impending call or order to covered active-duty status, eligible employees may be entitled to use up to 12 weeks of FMLA. Qualifying exigencies may include:

- *Short-notice deployment:* Leave (up to 7 calendar days) to address any issue that arises from an impending call or order to active duty in support of a contingency operation seven days or less prior to the date of deployment.

- *Military events and related activities:* Leave to attend any official ceremony, program, or event sponsored by the military related to the covered active duty or call to covered active duty.
- *Child and school activities:* Leave to arrange or provide for childcare or school-related activities.
- *Financial and legal arrangements:* Leave to make or update various financial or legal arrangements.
- *Counseling:* Leave to attend counseling (by someone other than a health care provider) when necessary, as a result of the covered active duty or call to covered active-duty status.
- *Rest and recuperation:* Leave to spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment (up to 15 calendar days each instance).
- *Post-deployment activities:* Leave to attend arrival ceremonies (including funeral or memorial services), reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active-duty status.
- *Parental care:* Leave to arrange for alternative care for a parent of the military member when the parent is incapable of self-care; to provide care for a parent of the military member on an urgent, immediate need basis; to admit to or transfer to a care facility; or to attend meetings with staff at a care facility, when such care or arrangements are necessitated by the covered active duty or call to covered active-duty status of the military member.
- *Additional activities:* Leave to address other events arising from the military member's covered active duty or call to covered active-duty status agreed upon between employer and employee.

(2) *Leave to Care for Covered Servicemember.* To care for a covered service member with a serious injury or illness. Employees who meet the eligibility requirements for FMLA leave may take up to 26 weeks of leave in a single 12-month period to care for a *covered servicemember* with a serious injury or illness incurred in the line of duty on active duty, if the employee is the spouse, son, daughter, parent, or "next of kin" of the covered servicemember. *Covered Servicemember* is defined as: 1) A current member of the Armed Forces including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or 2) A *covered veteran* who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

*Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.



*Serious injury or illness* is defined as being incurred by the member in the line of duty on active duty in the Armed Forces, (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and for covered veterans, manifested itself before or after the member became a veteran.

### **Amount of Leave**

An eligible employee can take up to 12 weeks of FMLA during any 12-month period. nbkc bank will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the company will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA military caregiver leave during a single 12-month period. For this military caregiver leave, the company will measure the 12-month period as a rolling 12-month period measured forward. FMLA already taken for other FMLA circumstances, will be deducted from the total of 26 weeks available.

Eligible spouses who both work for nbkc bank may only take a combined total of 12 weeks of leave for the birth of a child, adoption or placement of a child in foster care, or care for a parent (but not a parent "in-law") with a serious health condition. Both may only take a combined total of 26 weeks of leave to care for a covered injured or ill service member (if each spouse is a parent, spouse, child or next of kin of the service member).

### **Intermittent Leave or a Reduced Work Schedule**

Employees may take FMLA in one consecutive block of time, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member) in a 12-month period. Intermittent or reduced schedule leave not medically necessary but requested by the employee (such as time to care for a newborn or newly placed child) may be approved at the discretion of nbkc bank.

nbkc bank may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care. The employee will be entitled to equivalent pay and benefits but will not necessarily be assigned the same duties in the alternative position.

If leave is unpaid, nbkc bank will reduce an employee's salary based on the amount of time worked. Employees will not be charged FMLA for periods during which they are working. For the birth, adoption or foster care of a child, nbkc bank and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a

reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

When leave is needed for planned medical treatment, the employee is encouraged to make a reasonable effort to schedule treatment so as not to unduly disrupt the company's operations.

### **Employee Notice Requirement**

All employees requesting FMLA must provide verbal or written notice of the need for leave to their manager and Human Resources:

- *Foreseeable*: When the need for the leave is foreseeable, the employee must provide the company with at least 30 days' notice. When an employee becomes aware of a need for FMLA fewer than 30 days in advance, the employee must provide notice of the need for leave either the same day the need for leave is discovered or the next business day.
- *Unforeseeable*: When the need for FMLA is not foreseeable, the employee must comply with the company's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Within five business days after the employee has provided this notice, Human Resources will complete and provide the employee with a Notice of Eligibility and Rights and request a medical certification or other supporting documentation as necessary.

### **Certification**

Employees must provide sufficient information for nbkc bank to determine if the leave may qualify for FMLA protection, as well as the anticipated timing and duration of the leave. Vague, ambiguous, or non-responsive information will be considered insufficient. Employees also must inform nbkc bank if the requested leave is for a reason for which FMLA was previously taken or certified. Refusal or failure to give reasons for requesting FMLA or to provide the requested certification may result in the delay or denial of FMLA.

Employees will be required to provide a medical certification if the leave request is: 1) for the employee's own serious health condition, 2) to care for a family member's serious health condition, or 3) military caregiver leave. Employees must provide the requested certification within 15 calendar days unless it is not practicable under the circumstances to do so despite the employees' diligent, good faith efforts. If the certification is not complete or is insufficient, employees will be required to obtain and provide the additional information necessary to make the certification complete and sufficient. Failure to provide the requested certification in a timely manner may result in delay or denial of the leave. If an employee refuses to provide a certification, his/her leave request may be denied.

If necessary, nbkc bank may contact the health care provider directly to clarify or authenticate a medical certification provided by an employee.

nbkc bank, at its expense, may require the employee to obtain a second opinion if it has a reasonable question regarding the medical certification provided by the employee. If the second health care provider's opinion differs from the original medical certification, nbkc bank,



at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion.

Separate certification may also be required regarding the nature of the family member's military service and/or the existence of a qualifying exigency, such as active-duty orders. When a leave is requested, nbkc bank will notify the employee of the requirement for certification and when it is due. Failure to provide complete and sufficient certification as required may result in the delay or denial of FMLA.

### **Recertification**

nbkc bank will require recertification of a medical condition for employee's own serious health condition or to care for a family member every six months in connection with an absence. Recertification may be requested more often under some circumstances, such as with an extension of leave or if circumstances described in the previous certification have changed.

### **Designation of FMLA Leave**

Within five business days after the employee has submitted the required certification or other documentation, Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the FMLA Designation Notice.

### **Employee Status and Benefits During Leave**

Employees' health benefits will continue during the leave period at the same level and under the same conditions as if the employee was continuously at work.

While on paid leave, the employer will continue to make payroll deductions for the employee's share of insurance premiums. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received within 30 days of the prior month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave.

nbkc bank will provide 15 days' notification prior to the employee's loss of coverage.

If an employee elects not to return to work for at least 30 calendar days at the end of the leave period, he/she will be required to reimburse nbkc bank for the cost of the health benefit premiums paid by nbkc bank for maintaining coverage during the leave, unless employee cannot return to work because of a serious health condition or other circumstances beyond his/her control.

On return from an approved FMLA leave most employees will be returned to their same position held when leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. In addition, if health care coverage lapsed because of lack of premium payment, upon return, health care coverage will be restored without preexisting condition, waiting period or medical examination.

Use of an approved family and medical leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.



**Use of Supplemental Pay for Unpaid leave**

FMLA is unpaid leave, although employees may be eligible for short- or long-term disability and/or workers' compensation benefits under those policies. If entitled to receive money from these sources, leave will be considered "paid leave" for the period during which money is received.

**Use of Paid Time Off for Unpaid Leave**

If leave is "unpaid," employees will be required to substitute accrued PTO for "unpaid" FMLA leave. The ability to substitute accrued paid leave is determined by the terms and conditions of those leave and time off policies.

FMLA runs concurrently with other types of leave including PTO, short-term disability, worker's compensation, etc. The substitution of paid leave time for unpaid leave time does not extend the 12-week or 26-week leave period. Further, in no case should the substitution of paid leave time for unpaid leave time result in receipt of more than 100% of an employee's salary.

**Intent to Return to Work from FMLA Leave**

On a basis that does not discriminate against employees on FMLA, nbkc bank may require an employee on FMLA to report periodically on the employee's status and intent to return to work.

The employee must return to work as soon as permitted by his/her health care provider. The employee must submit return to work clearance to Human Resources before returning to work. Employees failing to provide the release from their healthcare provider will not be permitted to resume work until it is provided and may no longer be entitled to reinstatement.

Certain rules apply when an employee is released to return to work (with or without restrictions):

1. The employee must provide a release to return to work (with or without restrictions) from the health care provider.
2. If the employee is released to work with no restrictions, the employee will be returned to the same position held prior to FMLA, or one that is equivalent in pay, benefits and other terms or conditions of employment.
3. If the employee is released to work with restrictions, nbkc bank will review the employee's situation on an individualized basis to determine if reasonable accommodation of the restrictions can be made.
4. Employees who fail to return to work on the scheduled end date of their approved leave of absence or make a timely request for an extension prior to that date will be considered to have abandoned the job and their employment may be terminated without further notice.
5. If an employee is not released to work at the conclusion of their FMLA entitlement, he/she may request an extension of leave. There is no guarantee of availability or approval of such leave, but upon request, nbkc bank will engage in interactive dialogue with the employee and will make an individual determination of what is reasonable based on the specific circumstances of the employee.



### **No Work While on Leave**

While on approved leave, it is expected that employees only engage in those activities that are consistent with the reason for the leave. The taking of another job while on approved leave of absence is grounds for immediate termination, to the extent permitted by law.

### **Exemption for Key Employees**

nbkc bank may choose not to return certain key employees to their former or equivalent positions following a leave if restoration of employment will cause substantial economic injury to nbkc bank. (This fact-specific determination will be made by nbkc bank on a case-by-case basis.) nbkc bank will notify employees if they qualify as a "key" employee, if nbkc bank intends to deny reinstatement, and of his/her rights in such instances.

### **Recordkeeping**

Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for the purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the personnel files.

### **Definitions**

**Serious health condition** means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. This can include conditions with short-term, chronic, long-term or permanent periods of incapacity.

**Spouse** means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

**Child** means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA is to commence.

**Parent** means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

**Qualifying exigency** includes short-notice deployment, military events and activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

**Covered active duty** for members of a regular component of the Armed Forces, means duty during deployment of the member with the Armed Forces to a foreign country. For a member of the Reserve components of the Armed Forces, it means duty during the deployment of the member of the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.



**The next of kin of a covered service member** is the nearest blood relative, other than the covered service member's spouse, parent or child in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under FMLA.

**Covered service member** is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation or therapy, or is in outpatient status or on the temporary disability retired list for a serious injury or illness.

**Serious injury or illness** is one that is incurred by a service member in the line of duty on active duty that may cause the service member to be medically unfit to perform the duties of his/her office, grade, rank or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty and that were aggravated by service in the line of duty on active duty.

Employees with any questions regarding this policy should contact Human Resources.